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U.S. Department of Labor
Office of Administrative Law Judges
50 Fremont Street, Suite 2100
San Francisco, CA 94105



DATE: August 10, 2000

CASE NO. 1994-OFC-9
ARB CASE NO. 97-111

In the Matter of

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
("OFCCP"), UNITED STATES DEPARTMENT OF LABOR,
Plaintiff

v.

AMERICAN AIRLINES, INC.
Defendant

ORDER APPROVING CONSENT DECREE

The parties in this case under section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §793 ("Act"), and its implementing regulations at 41 C.F.R. Part 60-741, having filed a duly executed Consent Decree, dated August 8, 2000, which states, *inter alia*, that the review proceedings before the federal courts are completed, the "Order Staying Proceedings" issued June 16, 1999, is hereby terminated. Also, the plaintiff having at the same time filed an "Amended Administrative Complaint" dated August 8, 2000, which is covered by the consent decree, leave to file the "Amended Administrative Complaint" is granted. 41 C.F.R. §60-30.5(c). Finally, review of the Consent Decree having shown that it is in compliance with 41 C.F.R. §60-30.13(b), and that it fairly and adequately resolves all pending issues in this matter, the Consent Decree is hereby APPROVED AND ADOPTED in its entirety. 41 C.F.R. §60-30.13(d).

SO ORDERED.

ALFRED LINDEMAN
Administrative Law Judge

San Francisco, California
AL:ms

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

UNITED STATES DEPARTMENT OF LABOR,)	
OFFICE OF FEDERAL CONTRACT COMPLIANCE)	
PROGRAMS,)	
)	
Plaintiff,)	
)	Case Number
)	94-OFC-9
v.)	
)	
AMERICAN AIRLINES, INC.,)	
)	
)	
Defendant.)	

CONSENT DECREE

Pursuant to 41 CFR 60-741.29(b) and 41 CFR 60-30.13, the parties to this action, plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and defendant, American Airlines, Inc. ("American"), have negotiated and executed this Consent Decree ("Decree"), including all Appendices hereto. This Decree constitutes a full and final resolution of this action. OFCCP initiated and conducted compliance reviews of American airport facilities during 1989, in Nashville, Tennessee, and in Detroit, Michigan. These compliance reviews resulted in the agency making findings of discrimination and filing an administrative complaint against American with respect to its Nashville station. American reviewed OFCCP's findings and contested them, leading to litigation and then, in the interest of reaching a resolution, to this Decree.

PART A. JURISDICTION AND PROCEDURAL HISTORY

1. OFCCP has alleged and, for purposes of this Decree including issues related to compliance with this Decree, American does not contest, that this forum has jurisdiction in this matter pursuant to Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. §793 (hereinafter "Section 503"), and the rules and

regulations issued thereunder at 41 CFR Part 60-741.

2. OFCCP initiated enforcement proceedings and filed an administrative complaint pursuant to 41 CFR 60741.29(b) and 41 CFR Part 60-30.5 on April 29, 1994, alleging that American had failed to comply with its obligations as a government contractor under Section 503 and its implementing regulations at its Nashville, Tennessee station.

3. Simultaneously with submitting this Decree to the Administrative Law Judge, OFCCP filed an Amended Administrative complaint alleging violations of Section 503 at American's Detroit station.

Nashville

4. OFCCP initiated a compliance review of American's Nashville station on February 1, 1989, and conducted onsite inspections periodically between May 15, 1989 and July 24, 1989.

5. On September 22, 1989, OFCCP issued a Pre-Determination Notice advising American of its findings and alleging that discrimination had occurred against certain applicants for nonflight positions diagnosed by American's medical staff as having medical problems limiting their ability to safely perform.

6. After a careful review of OFCCP's allegations, American found them without merit. American, informed OFCCP of its position on October 12, 1989.

7. OFCCP and American attempted to resolve the issues raised by OFCCP's conclusions and conducted conciliation meetings on October 18, 1989, and December 14, 1989.

8. OFCCP issued a Notice of Violation ("Notice") and a proposed Conciliation Agreement on November 17, 1989. The Notice alleged that there were several problem areas, including medical screening and selection practices, and alleged that from January 1, 1988 through December 31, 1988, American discriminated against certain individuals with disabilities in violation of 41 CFR 60-741.4(a).

9. OFCCP and American, continued to correspond after November 1989, during which time American provided OFCCP additional information in support of its position that no unlawful discrimination had occurred. The parties were unable to come to resolution through these communications.

10. OFCCP commenced this enforcement proceeding regarding certain applicants at the Nashville station on April 29, 1994. The parties nevertheless continued to communicate.

11. On June 6, 1994, the case was assigned to Administrative Law Judge ("ALJ") Alfred Lindeman.

12. The parties engaged in discovery and filed pre-trial motions, including two (2) motions for summary judgement filed by American on June 7, 1995.

13. On September 19, 1995, ALJ Lindeman granted one of American's motions for summary judgement while denying the other, thereby dismissing OFCCP's case.

14. Both American and OFCCP filed exceptions and responses to exceptions to the ALJ's rulings with the Assistant Secretary on November 22, 1995, and February 2, 1996, respectively.

15. On April 26, 1996, the Assistant Secretary granted OFCCP's exceptions, denied American's, and remanded the case to the ALJ for a hearing on the merits.

16. By joint motion, the parties requested a stay of proceedings on July 2, 1996, to attempt resolution of the issues raised by OFCCP's findings.

17. On April 8, 1997, the United States District Court for the Northern District of Texas issued an interlocutory order holding that Section 503 does not prohibit discrimination or require affirmative action.

18. On May 30, 1997, the ALJ issued a recommended decision to dismiss based upon the April 8, 1997 order of the federal court.

19. On July 18, 1997, OFCCP filed exceptions to the ALJ's recommended decision.

20. On July 24, 1997, the district court issued a final decision holding that OFCCP's then-existing Section 503 regulations did not permit OFCCP to undertake compliance reviews. The court permanently enjoined further administrative prosecution of American. OFCCP appealed.

21. On May 17, 1999, the Fifth Circuit Court of Appeals dismissed American's federal court action for lack of jurisdiction.

22. Since the May 17, 1999 dismissal, the parties have met to

discuss resolution of the issues. The instant agreement followed.

23. Discovery was not complete in this matter at the time the parties entered into this agreement, nor was trial on the merits ever had.

Detroit

24. OFCCP initiated a compliance review of American's Detroit station on June 2, 1989, and conducted onsite inspections periodically from September 26, 1989 to December 1, 1989.

25. OFCCP issued a letter of deficiencies on December 18, 1989, notifying American that the agency believed it had violated Section 503 and 41 CFR 60-741.6 by unlawfully denying employment from January 1, 1988, through June 2, 1989 to certain applicants based upon the results of preemployment medical examinations.

26. American disputed OFCCP's conclusions and responded to the letter of deficiencies on January 11, 1990.

27. OFCCP convened a conciliation meeting on February 11, 1990, in which the parties clarified their respective positions but did not resolve the charges. On March 9, 1990, American requested that OFCCP further clarify its findings by identifying the impairment of each individual alleged to be disabled.

28. On April 7, 1990, OFCCP issued a notice to show cause. The show cause notice stated that American's policy allegedly disqualifying all medically restricted individuals unlawfully screened out qualified individuals with disabilities in violation of 41 CFR 60-741.6(c).

29. American responded on May 23, 1990 by denying that its hiring actions violated Section 503 or that it applied physical job qualification requirements which were not job-related, and consistent with business necessity and safe performance.

30. The parties continued to communicate and hold conciliation meetings until October 9, 1990, when OFCCP advised American that it considered the conciliation discussions at an impasse and that the matter was being referred for administrative enforcement.

31. After the matter was referred for enforcement, the parties continued to exchange information and to discuss settlement but were unable to reach settlement.

PART B. GENERAL PROVISIONS

32. This Consent Decree shall constitute the final Administrative order in this case, and shall have the same force and effect as an order made after a full hearing and finals review by the Administrative Law Judge.

33. This Consent Decree constitutes full and final settlement and resolution of all issues and claims arising out of the amended Administrative Complaint in OFCCP v. American Airlines, Inc., 94-OFC-9 ("Amended Administrative Complaint").

34. The record forming the basis on which this Decree is entered shall consist of the Amended Administrative Complaint, this Decree, and the Appendices attached hereto.

35. This Decree shall not become final until the Administrative Law Judge has signed it. The effective date of the Decree shall be deemed to be three (3) days after it becomes final.

36. This Decree shall remain in effect for twenty four (24) months after the effective date of the Decree, or until 30 days after the closure of the escrow account pursuant to Paragraph 59, whichever comes earlier.

37. The parties hereby waive all further procedural steps to contest the binding effect of this Decree.

38. The parties hereby waive any right to challenge or contest the validity of the findings and order entered into in accordance with the agreements contained in this Decree.

39. This Decree does not constitute an admission by American of unlawful discrimination or of any violation of Section 503, or its implementing regulations. American always has denied, and continues to deny, that any unlawful discrimination occurred, American has entered into this Decree only to avoid long and expensive litigation. It is the express intention of the parties that this Decree shall not create any rights of action in any third parties, nor shall it be offered in evidence or otherwise used in any manner by any person, firm, corporation, entity, organization, or agency of any government in an attempt to prove that American has violated any law, regulation or order, except for proceedings initiated by OFCCP pursuant to Part D of this Decree.

40. This Decree shall be binding on American, its successors, assigns, divisions, and subsidiaries, and OFCCP and its agents, officers and employees; Provided, however, that nothing in this

Decree shall be read to suggest a "single-entity" relationship between American and any of its subsidiaries for purposes of OFCCP's jurisdiction, and that nothing in this Decree constitutes an admission that American is a "single entity" with any of its subsidiaries.

41. Nothing herein is intended to relieve American from compliance with the requirements of Section 503, or its implementing regulations, or to limit OFCCP's right under applicable regulations to review American's compliance with such requirements. Compliance with this Decree shall constitute compliance with Section 503 with respect to those issues which are within the scope of the amended complaint.

42. American agrees that OFCCP may review compliance with this Decree, and American will provide OFCCP with relevant documents regarding its Nashville and Detroit stations that are requested by OFCCP and reasonable in nature and scope. American also agrees that OFCCP may come onsite at its Nashville or Detroit stations, if the semi-annual reports American submits pursuant to Paragraphs 62 and 63 below reveal evidence of a potential violation of this Decree. OFCCP's authority in any onsite initiated pursuant to this Paragraph will be limited to the enforcement of the terms of this Decree. OFCCP must notify American, in writing, at least twenty {20} calendar days before it seeks an onsite review of American's compliance pursuant to this Paragraph.

43. OFCCP acknowledges that during the course of its investigations of American's Nashville and Detroit stations, as well as its other investigations of American stations during 1988-90, the agency has gathered documents about American. OFCCP will not seek to introduce any of these documents into evidence in an enforcement proceeding arising from a future audit unrelated to this Decree, unless American provides these documents to OFCCP during the future audit or introduces them into evidence at an ensuing enforcement proceeding. OFCCP agrees not to share any documents obtained during audits of American conducted during the period 1988-90 with any third party, except to the extent required by law. American reserves all rights to oppose the release of any documents to any third parties pursuant to a Freedom of Information Act ("FOIA") or other request.

44. By entering into this Decree, American does not consent to OFCCP's jurisdiction or authority to bring this action. American specifically reserves the right to assert a lack of jurisdiction, and/or any and all other defenses, in response to any existing or future investigation or action by OFCCP except in matters related to compliance with this Decree.

PART C. SPECIFIC PROVISIONS

The parties desire to enter into a just and reasonable resolution of this matter without further proceedings. To that end, they have negotiated in good faith and have executed this Decree with the following specific provisions:

Back Pay to the Affected Individuals

45. American will provide to the affected individuals back pay and interest in a total amount of \$1,695,800 ("Escrowed Amount"). The affected individuals shall consist of the individuals listed in Appendix A. The parties agree that an escrow agent will be responsible for making the payments to the individuals eligible to receive them under this Decree.

46. The individuals listed in Appendix A will receive a payment only if OFCCP provides an updated address and an information form for that individual to American in accordance with the procedure set forth in Paragraph 53 below.

47. The total Escrowed Amount shall be divided among the individuals listed in Appendix A as follows: each listed individual shall share in the Escrowed Amount on a pro rata basis, i.e., individual shares shall be determined by dividing the Escrowed Amount by the number of listed individuals for whom OFCCP provides addresses and information forms to American pursuant to Paragraph 53 below. American shall withhold applicable payroll deductions from each individual's share of the Escrowed Amount.

48. Within twenty (20) days of the effective date of this Decree, American will put the total amount (\$1,695,800) into an interest-bearing escrow account ("Escrow Account"). The Escrow Account shall bear interest at the highest reasonable rate available under the circumstances. The interest that accrues on the Escrow Account from the date of funding the Escrow Account to the date on which American receives from OFCCP an undated address list pursuant to paragraph 53 below, will inure to the benefit of the listed individuals. The interest that accrues before the date American receives from OFCCP an updated address list pursuant to Paragraph 53 below will be divided on a pro rata basis among those individuals for whom OFCCP provides updated addresses to American. This pro rata share of the interest will be included in each eligible individual's check issued pursuant to Paragraph 55 below, less applicable payroll deductions.

49. Within ten (10) days after the establishment of the

Escrow Account, American shall furnish to OFCCP a report setting forth:

- a. the date on which the Escrow Account was established;
- b. the amount of the deposit into the Escrow Account;
- c. the identity of the institution where the Escrow Account is established; and
- d. the interest rate at which the Escrow Account is invested.

50. Within ninety (90) days after the establishment of the Escrow Account, and every ninety (90) days thereafter until American receives from OFCCP an updated address list pursuant to Paragraph 53 below, American shall furnish to OFCCP a report setting forth the amount of interest earned by the Escrow Account in the preceding quarter.

51. Within thirty (30) days after the effective date of the Decree, OFCCP will send to each individual listed in Appendix A at the last known address the notice attached as Appendix B hereto and the information form attached as Appendix C. Within ten (10) days after the date on which it mails the notices and information forms to the individuals, OFCCP shall advise American in writing of the date of that mailing. OFCCP shall have the right to attempt to locate the listed individuals who are no longer at the last known address. OFCCP will have four (4) months from the effective date of the Consent Decree in which to locate the individuals listed in Appendix A and confirm their current addresses.

52. Each individual listed in Appendix A interested in participating in this settlement shall complete the information form attached as Appendix C and return it to OFCCP.

53. Within four (4) months and fifteen (15) days after the effective date of the Decree, OFCCP shall provide to American a list of the current, updated addresses of those individuals listed on Appendix A who have executed the information forms, and a copy of the information forms returned by the individuals.

54. American shall advise OFCCP within forty-five (45) days of receiving the list in Paragraph 53 ("Payee List") of the amount of each individual share of the Escrowed Amount (the pro rata share or back pay and the pro rata share of interest on the back pay).

55. Within sixty (60) days after American notifies OFCCP of

the amount of the individual shares of the Escrow Amount pursuant to Paragraph 54, American or its agent shall mail to each individual on the Payee List a check, which shall include the class member's pro rata share of the back pay plus the class member's pro rata share of the interest on the back pay, less, in each instance, applicable payroll deductions. American shall determine the appropriate payroll deductions for each check in accordance with standard practices. American shall provide each individual on the Payee List with a W-2 Form in accordance with standard business practices. Twenty-four and a half (24.5) percent of the payment received by each individual shall be deemed interest.

56. within thirty (30) calendar days following the end of the month(s) in which the checks described in Paragraph 55 are mailed, American will notify OFCCP, in writing, of the names of all individuals who were sent checks for their shares of monetary relief, including the address to which each check was mailed, the amount of each check, and the date on which each check was mailed.

57. American shall notify OFCCP in writing within fifteen (15) calendar days of the end of each month in which any check is returned as undeliverable to any individual on the Payee List. OFCCP will have thirty (30) calendar days from receipt of such notice to locate the specific individual and to inform American of a corrected address so that the check may be re-mailed. American will re-mail the check by certified mail within seven (7) calendar days of receiving the corrected address from OFCCP.

58. Any checks sent to individuals listed on the Payee List but not cashed and thus remaining unpaid one hundred eighty (180) calendar days after the date pursuant to Paragraph 55 on which the checks were mailed, will be void. Any checks that are re-mailed to individuals on the Payee List will be void 180 days after the date pursuant to Paragraph 57 on which those checks are re-mailed. American will have no further obligation under this Decree to pay those amounts represented by the uncashed checks to individuals on the Payee List, OFCCP, or any other person or entity.

59. Within thirty (30) days following the end of the last six (6) month period allowed for individuals on the Payee List to cash their checks (see Paragraph 58 above), the escrow agent shall furnish the parties a statement of the final balance remaining in the escrow fund. The fund shall be closed as of the date of that statement, and the remaining balance shall revert to American.

60. The parties may modify any time frame set forth in this Decree by mutual written agreement. In addition, OFCCP or American may petition the Administrative Law Judge to extend any of the

above time periods in Paragraphs 48-59 for no more than thirty (30) days in order to permit an individual to receive his or her pro rata share of the Escrowed Amount where the interest of justice would be served by such extension and for good cause shown.

61. American's current preemployment medical screening practices for the positions of fleet service clerk, ticket agent, and mechanic at its Nashville and Detroit stations are conducted and will continue to be conducted in accordance with the requirements of Section 503, including the prohibitions against discrimination applicable to the hiring of qualified applicants with physical or mental disabilities as set forth in Section 503's implementing regulations at 41 CFR Part 60-741 Subpart B.

62. American shall provide OFCCP with semi-annual reports for a period of (1) year regarding applicants at Nashville who are rejected for employment as fleet service clerks or ticket agents because of medical conditions. The first semi-annual report shall be due seven (7) months after the effective date of this decree and shall cover the six (6)-month period of time beginning with the Decree's effective date. The second report shall cover the successive six (6)-month period, and shall be mailed 30 days after the close of that six (6)-month period. The semi-annual reports shall be mailed to: Director of Program Operations, OFCCP, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C-3325, Washington, D.C. 20210.

63. The two semi-annual reports referred to in Paragraph 62 shall contain the following:

- a. the name of the rejected applicant;
- b. the position for which the rejected applicant applied;
- c. the date on which American extended a conditional offer of employment;
- d. the date and location of the medical evaluation;
- e. the reason(s) for American's determination that the individual was not medically capable of performing the position at issue, including, but not limited to:
 - i. each disqualifying medical condition;
 - ii. each test or examination result which contributed to American's decision that the individual was not medically capable;

iii. the reason(s) why American could not provide reasonable accommodation for the disqualifying medical condition; and

iv. a description of any direct threat, i.e., of the risk of substantial harm to the health or safety of individuals or others, posed by the disqualifying condition.

PART D. IMPLEMENTATION AND ENFORCEMENT OF THE DECREE

64. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges until such time as the Decree expires pursuant to Paragraph 36 above.

65. If, at any time after the effective date of this Decree, OFCCP believes that American has violated any portion of the Decree, OFCCP will promptly notify American of that belief in writing. The notification will include a statement of the facts and circumstances relied upon in forming that belief. Within twenty (20) days of receiving OFCCP's notice, American may respond in writing, except when OFCCP alleges and successfully demonstrates to the ALJ that such delay will cause irreparable injury. The parties will attempt to resolve the disputed issues amicably for a period of forty (40) days after OFCCP receives American's response.

65. Enforcement proceedings for violation of this Decree may be initiated at any time after the 40-day period in Paragraph 55 has elapsed (or sooner if irreparable injury is demonstrated or the parties agree in writing), upon filing with the Administrative Law Judge a motion for an order of clarification or enforcement and/or sanctions. The Office of Administrative Law Judges may, if it deems appropriate, schedule an evidentiary hearing on the motion. The issues in a hearing on the motion shall relate solely to the issues of the factual, and legal claims made in the motion.

67. Liability for violation of this decree may subject American to the sanctions set forth in Section 503 and its implementing regulations or other appropriate relief.

68. If a motion for an order of enforcement or clarification indicates by signature of counsel that the motion is unopposed by plaintiff or defendant, as appropriately, the motion may be presented to the Administrative Law Judge without hearing, and the proposed order may be implemented immediately. If said application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) calendar days of service of such motion.

69. The enforcement provisions set forth in Paragraphs 64-68 of this Decree shall permit OFCCP to initiate enforcement proceedings only with respect to pre-employment medical screening practices at American's Nashville and Detroit stations. Should OFCCP come to believe that operations at any other American station fail to comply with Section 503, its implementing regulations, or any other governing legal standards, OFCCP's only recourse shall be to initiate new enforcement proceedings consistent with the applicable governing statute and regulations.

70. The Consent Decree herein set forth is hereby approved and shall constitute the final Administrative order in this case. IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE: 8/10/00

ALFRED LINDEMAN
Administrative Law Judge

AGREED AND CONSENTED TO:

ON BEHALF OF PLAINTIFF OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

HENRY L. SOLANO
Solicitor of Labor

GARY M. BUFF
Acting Associate Solicitor
RICHARD L. GILMAN
Senior Trial Attorney

BEVERLY I. DANKOWITZ
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By: Richard L. Gilman

Date: 8/8/2000

ON BEHALF OF DEFENDANT AMERICAN AIRLINES, INC

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Attorneys for Defendant

By: George R. Salem

Date: 8-8-2000

APPENDIX A

[Editor's note: Appendix A, a three page list of class members, has been redacted from this copy of the consent decree]

APPENDIX B

NOTICE REGARDING LEGAL SETTLEMENT

Please Read This Notice
It Affects Your Legal

Re: OFCCP v. American Airlines,
Case No. 94-OFC-9

Dear American Airlines Applicant:

The U.S. Department of Labor's Office of Federal Contra has entered into a settlement agreement with American Airlines to resolve the case referred to above. OFCCP claimed in the lawsuit that American Airlines at its Nashville, Tennessee, and Detroit, Michigan, stations failed to comply with its obligations under Section 503 of the Rehabilitation Act, 29 U.S.C. §793, which prohibits companies from discriminating against qualified individuals with disabilities.

By settling, American Airlines has not admitted that it has discriminated against qualified individuals with disabilities. Rather, OFCCP and American Airlines have entered into this settlement agreement to resolve the matter without further legal proceedings.

As part of the settlement, American Airlines has agreed to provide back pay to certain individuals who applied for nonflight employment at its Nashville and Detroit stations.

According to the records in this case, you may be one of the individuals who are entitled to share in the back pay settlement. The total back pay amount, including interest, is \$1,695,800. The total back pay amount, minus legal payroll deductions, will be divided equally among the total number of affected individuals. We have not yet determined the specific amount to which you may be entitled, but you should be aware that the back pay fund will be divided among almost 100 applicants. You also should be aware that you will not receive this check for about eight (8) months.

Assuming you are eligible, American Airlines will mail you the check. Please look for it in about eight months. Read carefully all documents sent by American Airlines along with the check, and all information printed on both sides of the check. You will also receive a W-2 statement from American Airlines to assist you in preparing your incomes taxes; the back pay and interest amounts are taxable as income.

Please complete the attached Information Form. This form will provide us with the information necessary to confirm our records, and to contact you in the future so that you can receive your back pay check. Please mail the form to me in the enclosed envelope within 30 days of receiving this letter.

It is important that we have your current address, so that the check is mailed to the correct place. If you move **at any time** after you return the enclosed Information Form, please provide us with the updated address.

If you have any question or future address changes, you may write to me at:

U.S. Department of Labor
200 Constitution Avenue
Room N-2464
Washington, D.C. 20210

You may also call me or Richard Gilman at (202) 219-8000. We cannot accept collect calls, but, if you leave your name, phone number and the best time to reach you, we will call you back. Please tell the person who is answering the phone that you are calling about the American Airlines case.

Sincerely,

Beverly Dankowitz
Assistant Counsel for Litigation

Enclosure

APPENDIX C

INFORMATION FORM

OFCCP v. American Airlines, Case No. 94-OFC-9

NAME: _____

OTHER NAME(S) USED: _____
(Include unmarried name)

ADDRESS: _____

TELEPHONE NUMBER: _____
Area Code Phone Number

SOCIAL SECURITY NUMBER: _____

DATE OF BIRTH: _____

OTHER PERSON WHO WILL
KNOW HOW TO CONTACT YOU
IF YOU MOVE: _____

Name

Area Code Phone Number

DATE

YOUR SIGNATURE

Mail to:

Beverly Dankowitz
U.S. Department of Labor
200 Constitution Avenue
Room N-2464
Washington, D.C. 20210

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

UNITED STATES DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS,)	
)	
Plaintiff,)	
)	Case No. 94-OFC-9
v.)	
AMERICAN AIRLINES, INC., NASHVILLE, TENNESSEE, and DETROIT, MICHIGAN,)	
Defendant.)	

AMENDED ADMINISTRATIVE COMPLAINT

Pursuant to 41 CFR Part 60-30.5(c), plaintiff, Office of Federal Contract Compliance Programs, United States Department of Labor (hereinafter "OFCCP"), by its attorneys, hereby files this Amended Administrative Complaint and alleges:

1. This action is brought by OFCCP to enforce the contractual obligations imposed by Section 503 of the Rehabilitation Act of 1973, 29 U.S.C. § 793 (hereinafter "Section 503"), and the rules and regulations issued pursuant thereto.
2. Jurisdiction of this action exists under Section 503, 41 CFR 60-741.29 and 41 CFR Part 60-30.
3. Defendant, American Airlines, Inc., Nashville, Tennessee and Detroit, Michigan (hereinafter "American"), is engaged in the business of air transportation services.
4. At all times pertinent hereto, American maintained its corporate headquarters in Dallas-Fort Worth, Texas.
5. At all times pertinent hereto, American had 50 or more employees.

6. At all times pertinent hereto, American has had a Government contract or subcontract of \$2,500 or more.

7. American is a Government contractor or subcontractor within the meaning of Section 503, and is now, and at all material times has been subject to the contractual obligations imposed on Government contractors and subcontractors by Section 503 and the implementing regulations issued thereunder.

8. At all times pertinent hereto, American has and implement a written affirmative action program in ace in 41 CFR 60-741.5 and 60-741.6.

9. Pursuant to Section 503 and 41 CFR 60-741.4, American has agreed not to discriminate against any qualified individual with a disability and has agreed to take affirmative action to ensure that such qualified individuals are afforded employment opportunities without regard to their disabilities.

10. Pursuant to 41 CFR 60-741.6(c)(2), American has agreed not to utilize physical job qualification requirements which tend to screen out qualified individuals with disabilities unless such requirements are job related and consistent with business necessity and the safe performance of the job.

11. Since at least January T, 1988, American has failed or refused Section 503 and the Secretary of Labor's rules and regulations by maintaining and implementing a policy of rejecting for employment applicants for various part-time non-flight jobs who were deemed "not-competitive" for medical reasons including, but not limited to, the following conditions: hearing loss, vision loss, high blood pressure and asthma. Pursuant to this policy American has rejected for employment a class of qualified individuals with disabilities.

12. Since at least January, 1, 1988, American has failed or refused to comply with Section 503 and the Secretary of Labor's rules and regulations by taking action including,

- (a) Excluding qualified individuals with disabilities from jobs which enable American to carry out its Government contract and subcontract work;
- (b) Failing or refusing to comply with the affirmative action clause in 41 CFR 60-741.4, inter alia, by discriminating against and failing to take affirmative action to employ and retain in employment qualified individuals with disabilities;
- (c) failing to review and modify personnel practices to assure that individuals with disabilities are fully considered for job opportunities as required by 41 CFR 60-741.6;
- (d) failing to review physical and mental job qualification requirements to insure

that they are job related and consistent with business necessity as required by 41 CFR 60-741.6;

- (e) applying physical and mental job qualification requirements that screen out qualified individuals with disabilities, and that are not job related and consistent with business necessity and the safe performance of the job, as required. 41 CFR 60-741.6;
- (f) failing to make a reasonable accommodation to the physical and mental limitations of employees as required by 41 CFR 60-741.6;
- (g) Failing to identify and provide complete relief including back pay where appropriate for qualified individuals with disabilities who have been denied employment because of those disabilities.

13. The acts and practices described in paragraphs 11 and 12, above, violation Section 503 and the regulations promulgated thereunder, and therefore violation the defendant's contractual obligations to the Federal Government.

14. All procedural requirements prior to the filing of this Complainant have been met. Plaintiff has advised defendant of its findings of defendant's violations of its contractual obligations under Section 503, and has attempted to secure voluntary compliance through means of conciliation and persuasion. These efforts were unsuccessful.

15. Unless restrained by an Administrative Order, the defendant will continue to violate the obligations imposed upon it by Section 503 and the rules and regulations issued thereto.

WHEREFORE, plaintiff prays for a decision and order pursuant to 41 CFR 60-741.28, 41 CFR 60-741.29, and 41 CFR part 60-30 permanently enjoining defendant, its officers, agents, servants, employees, successors, divisions and subsidiaries and those persons in active concert or participation with it, from: (1) failing and refusing to comply with the requirements of Section 503 and the rules and regulations issued pursuant thereto as alleged herein; (2) failing to hire qualified individuals with disabilities; (3) utilizing hiring processes and selection criteria which tend to screen out qualified individuals with disabilities; (4) failing to make reasonable accommodations to the physical and mental limitations of applicants; (5) failing to identify and provide complete relief including lost wages, interest and front wages, and failing to provide all other benefits of employment, including but not limited to reinstatement and retroactive seniority, for qualified individuals with disabilities who have been discriminated against on the basis of those disabilities.

Plaintiff further prays for an order pursuant to 41 CFR 60-741.28 and 41 CFR part 60-30.30 canceling all of American's Government contracts and subcontracts, and those of its officers, agents, successors, divisions and subsidiaries and those persons in active concert or participation with it, and declaring said persons and entities ineligible for the award of any Government contract or

subcontract, or for the extension c Government contract or subcontract, until such time as American satisfied the Director of OFCCP that it is in compliance with the provisions of Section 503 and the regulations promulgated thereunder.

Plaintiff further prays for such other relief as justice may require.

Respectfully submitted,

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Date: 8/8/00

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of August, 2000, a copy of the foregoing Amended Administrative Complaint has been served upon American Airlines and counsel for defendant by first class mail, postage prepaid, at the following addresses

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s/ Richard L. Gilman